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June 20, 2014

VIA MAIL

Ms. Nancy Rumrill  
U.S. Environmental Protection Agency, Region 9  
Ground Water Office, WTR-9  
75 Hawthorne Street  
San Francisco, CA 94105

Re: *Curis Resources (Arizona) Inc., Class III UIC Well Permit Application*

Dear Ms. Rumrill:

Our client, Southwest Value Partners (SWVP), remains deeply concerned with plans by Florence Copper Inc. (FCI) for in-situ leach copper mining at their property in Florence, Arizona. As you know, SWVP, the Town of Florence, Pulte, and Johnson Utilities have appealed the Aquifer Protection Permit issued to FCI last year by ADEQ. We appealed that decision because we do not believe the permit adequately protects the regional aquifer that represents the Town of Florence's primary drinking water supply. As part of that appeal, through documents and testimony, we learned of significant information possessed by or known to FCI that had not previously been provided to ADEQ. We believe that this information is critical to key issues currently before EPA and that FCI has not yet provided this information to EPA.

You will remember that we previously suggested that EPA obtain the records from BHP's 1997-1998 pilot test of in-situ leach copper mining at this same site. There were indications in available public records that BHP's test encountered

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significant problems. This raised serious questions about FCI's project because FCI touted the BHP test throughout the UIC application as evidence that in-situ leach mining could be conducted at this site safely and with no impacts to groundwater. Neither EPA nor ADEQ elected to request those records from FCI.

In our appeal, we filed a subpoena to obtain the BHP records. FCI objected and moved to quash the subpoena, claiming the BHP test data was irrelevant. Fortunately, the Administrative Law Judge issued the subpoena and we obtained voluminous records from the BHP test, including groundwater sampling data, draft and final test reports, and groundwater modeling information. Testimony at the hearing indicated that none of this information was provided to ADEQ, and we do not believe it has ever been provided to EPA. Despite FCI's repeated reliance on the BHP test throughout their permit applications, FCI objected to use of the data at the hearing, claimed the information was irrelevant, and tried to discredit testimony of their own witnesses attesting to the results of the BHP test. Testimony by FCI's own consultant indicated that FCI did not include all the BHP data in its modeling for the APP and UIC applications.

It is indisputable that critical information related to key issues in EPA's decision on FCI's UIC permit was revealed for the first time at the state administrative hearing, including disclosure of the BHP test data and testimony from FCI's own consultants and experts. For example, it became abundantly clear that FCI's groundwater models, which were founded upon assumed homogeneity of the aquifer, failed to account for heterogeneities, short-circuits, and anomalous results revealed in the BHP test data. Similarly, we discovered for the first time during the appeal that BHP experienced vertical migration of contaminants into the Lower Basin Fill Unit and that FCI is predicting cones of depression that reach beyond FCI's property boundaries, facts that call into question proposed hydraulic control criteria and monitoring in the UIC and APP permits. These are just two of numerous new facts developed during the appeal that will impact the effectiveness of any permit that may be issued by EPA in the future.

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EPA has an obligation of due diligence in its review of UIC permit applications, including the duty to request additional information when issues and concerns arise about the completeness and accuracy of an application. EPA's own guidance to UIC permit reviewers directs them to:

- "cross-reference materials to ensure completeness and accuracy";
- "look at the site holistically, rather than looking at the well as a point in the ground";
- avoid assuming the information presented in an application "is adequate to fully address questions that arise about the proposed facility"; and
- avoid reviewing "the various attachments and pieces of the application in a vacuum."

As reflected in the guidance, at the heart of all of this is EPA's "primary focus throughout the entire permitting process" to protect underground sources of drinking water from contamination.<sup>1</sup>

FCI possesses detailed information on the BHP pilot test that raises serious and fundamental questions about FCI's proposal, information that FCI has not provided to EPA. If EPA does not request the information from FCI and does not give the information the analysis and scrutiny it deserves, EPA will not have conducted a thorough and defensible review of FCI's application. Worse, any draft permit issued without review of this information almost certainly will fail to adequately protect drinking water supplies.

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<sup>1</sup> EPA, *Drinking Water Academy, Introduction to UIC Permitting* (April 2002), available at <http://water.epa.gov/learn/training/dwatrainig/upload/dwaUIC-uicpermit.pdf>.

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Therefore, we urge EPA to obtain this information from FCI as soon as possible and to thoroughly analyze the materials and their implications for FCI's proposed project.

Sincerely



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CC:

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